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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Calling Party Pays Service Option)
in the Commercial Mobile Radio Services)
_____))

WT Docket No. 97-207

**REPLY COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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SUMMARY

Based on the record in this proceeding, USTA urges the Commission to deny CTIA's petition for expedited rulemaking on Calling Party Pays ("CPP") service. Denial of the petition best ensures that the marketplace, not regulation, will govern the deployment of CPP. The record indicates no new developments in the marketplace that warrant Commission intervention regarding CPP. Indeed, proponents of the petition recycle many of the same flawed arguments that they made in the Commission's still-pending inquiry on CPP.

Proponents of the petition appear to seek a broad regulatory regime for CPP that would shift the burden and risks of providing CPP to wireline LECs. As USTA has shown, the most recent market information indicates that competition is successfully driving the deployment of CPP. Any rulemaking on CPP would be premature and would distort these competitive forces. Importantly, CPP is developing successfully without any intervention from the Commission.

As USTA demonstrated in its initial comments, a rulemaking is unnecessary to resolve issues like caller notification and payment obligations. The CPP-regulation schemes supported by some commenters would require incumbent LECs to bill and collect for CMRS providers' CPP offerings. Such schemes would require the Commission to re-regulate LEC billing and collection operations, which were deregulated in 1986. If permitted, these schemes would also unjustly force LECs to bear the financial risks of CMRS providers' offering CPP.

New CPP charges on the phone bills of wireline end-users would add to the current public perception that the Commission is raising rates paid by those end-users. Such charges

would undoubtedly jeopardize incumbent LECs' goodwill with their customers. As USTA has pointed out, this raises significant universal service concerns.

By relying on the CPP marketplace and denying the petition, the Commission will also avoid potential jurisdictional issues raised by state regulators.

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I. INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits these reply comments regarding CTIA's petition for expedited consideration of nationwide rules for Calling Party Pays ("CPP") billing capabilities of CMRS providers ("the petition").^{1/}

The record in this proceeding clearly indicates that the Commission should deny the petition. Doing so is the best way to ensure that the marketplace, not regulation, governs the deployment of CPP. There are no new developments in the marketplace that warrant

^{1/} See Petition For Expedited Consideration Of The Cellular Telecommunications Industry Association, WT Docket No. 97-207 (filed Feb. 23, 1998). USTA filed comments on the petition on May 8, 1998, pursuant to FCC Public Notice, WT Docket No. 97-207, DA 98-468 (rel. Mar. 9, 1998). All references herein to a party's "comments" refer respectively to comments filed on or about May 8, 1998, in WT Docket 97-207. USTA also filed comments ("USTA NOI comments") and reply comments ("USTA NOI reply comments") on CPP pursuant to the Notice of Inquiry in WT Docket 97-207 ("NOI"). See *Calling Party Pays Service Option in the Commercial Mobile Radio Service*, 12 FCC Rcd 17693 (1997).

regulation -- all of the most recent information indicates that competition is successfully driving the deployment of CPP.

The assertions of various proponents of the petition notwithstanding,^{2/} there is no industry consensus regarding the future of CPP in the United States. Indeed, commenters fundamentally disagree on the Commission's role, if any, in promoting CPP. CTIA's petition, which shortly followed the close of the pleading cycle in the Commission's to-be-completed inquiry into CPP, is a bald attempt to stampede the Commission to act needlessly and despite disagreement within the industry.

USTA believes that any rulemaking on CPP would distort the market forces already at work implementing CPP. As the comments of AT&T demonstrate, CPP is independently evolving in the marketplace without any intervention from the Commission. As commenters emphasize, Commission commencement of a rulemaking on CPP would be premature and may distort the results of such market-driven developments.^{3/}

USTA has grave concerns that proponents of the rulemaking proposed in the petition are, in fact, pushing for a far-reaching regulatory regime for CPP that would shift the burden and risks of providing CPP to wireline LECs. As USTA demonstrated in its initial comments, a rulemaking is not necessary to resolve issues like caller notification and payment obligations.^{4/} The CPP-regulation schemes supported by some commenters would

^{2/} See, e.g., comments of Omnipoint Communications, Inc. at 2.

^{3/} See comments of AT&T Wireless Services ("AT&T") at 2 ("A rulemaking at this time, however, would be premature because neither the industry nor the Commission knows what form CPP will eventually take"); BellSouth Corporation at 3 ("Proceeding to a rulemaking now would be premature; doing so on an expedited basis would be even more unwise").

^{4/} See comments of USTA at 4-5, 7-9.

require incumbent LECs to bill and collect for CMRS providers' CPP offerings. At a minimum, these schemes would require the Commission to re-regulate LEC billing and collection operations, which were deregulated in 1986. If permitted, these schemes would also unjustly force LECs to bear the financial risks of CMRS providers' offering CPP.

Further, new CPP charges on the phone bills of wireline end-users would lend additional credence to the current public perception that the Commission is raising rates paid by those end-users and undoubtedly jeopardize incumbent LECs' goodwill with their customers. USTA has pointed out in the NOI proceeding that this raises significant universal service concerns.^{5/}

At the same time, continuing to rely on the CPP marketplace will enable the Commission to avoid potential jurisdictional issues raised by state regulators.

II. THE COMMISSION SHOULD NOT UNDERTAKE THE REQUESTED RULEMAKING

A. The Marketplace, Not The Commission, Should Determine CPP Development

There is no reason for the Commission to intervene regarding the deployment of CPP. As commenters recognize, the wireless industry is enjoying dynamic growth.^{6/} Indeed, the FCC recently confirmed that the mobile telephony industry "has achieved new highs in

^{5/} See USTA NOI comments at 4.

^{6/} See comments of The Rural Telecommunications Group at 3 ("the CMRS industry is flourishing and competitive under the guidance of market forces, not regulation, and this marketplace regime must not be disturbed"); and Omnipoint Communications, Inc. at 3 ("the CMRS marketplace is certainly dynamic and competitive...").

subscribership."^{7/} In this atmosphere of robust growth, CMRS providers need no assistance from the Commission.

AT&T aptly notes that competitive conditions in the wireless marketplace will ensure that providers respond appropriately to customer demand for a CPP service option.^{8/}

AT&T describes its CPP offering in Minnesota,^{9/} and rightly cautions that "adoption of specific rules governing CPP is premature until more specifics about the implementation of CPP are known."^{10/} On an industry-wide basis, CTIA itself has developed a "standards requirements document" on CPP that industry standards bodies are considering.^{11/}

Some commenters choose to ignore these obvious marketplace developments regarding CPP. Instead, they recycle stale arguments that were originally aired in the NOI proceeding. Thus, for example, Vanguard Cellular Systems, Inc. ("Vanguard") attempts to present CPP as a means of promoting local competition.^{12/} As USTA has demonstrated, there is no indication, in the record compiled in response to the NOI or elsewhere, that mandatory CPP

^{7/} See *FCC Adopts Third Annual Report to Congress On State of CMRS Competition*, FCC News Release (rel. May 14, 1998).

^{8/} See comments of AT&T at 2.

^{9/} See, generally, comments of AT&T.

^{10/} *Id.* at 1.

^{11/} See *CTIA Service Description For Calling Party Pays (CPP) January 1998*, <http://www.wow-com.com/professional/reference/cppdescrip.cfm> (accessed May 27, 1998) ("CTIA Service Description"). See also *CTIA Finalizes CPP Standard; Issue Now Moves To TIA*, *Communications Today* (Jan. 13, 1998) (stating that the CPP standards requirements document would "be forwarded to the Telecommunications Industry Association and other appropriate standards-setting bodies for acceptance.")

^{12/} See comments of Vanguard at i, 4-5; see also comments of Sprint Spectrum, L.P., at 4-5.

availability can or will enhance competition for CMRS or local exchange service.^{13/} Vanguard also dwells on international CPP experiences,^{14/} which, as USTA has shown, have limited, if any, relevance to the dynamic U.S. marketplace.^{15/} Similarly, attempts to justify CPP on the basis of "balancing" traffic flows^{16/} ignore the fact that USTA and at least one other CMRS provider have already shown that achieving "balanced" traffic is not a meaningful public policy objective.^{17/} As a general matter, calls for a "national policy" for promoting CPP^{18/} are nothing more than pleas for special regulatory treatment favoring the wireless industry at the expense of wireline carriers.

Because the implementation of CPP in the marketplace is succeeding without Commission intervention, there is no need for the Commission to evaluate the merits of these recycled arguments. Clearly, marketplace developments indicate that further Commission activity on CPP issues is unnecessary at this time.

Indeed, even commenters that support the petition disagree widely as to what role, if any, the Commission should play in support of CPP. Some commenters appear to favor unspecified Commission regulation,^{19/} while others propose that the Commission's role

^{13/} See USTA NOI reply comments at 2-3.

^{14/} See comments of Vanguard at 6-7.

^{15/} See USTA NOI comments n. 8; USTA NOI reply comments at 3.

^{16/} See comments of Vanguard at 7-8.

^{17/} See USTA NOI reply comments at 5, *quoting* NOI comments of Paging Network, Inc. at 5.

^{18/} See comments of Motorola, Inc. at 2-3.

^{19/} See, e.g., *id.* at 3 ("The Commission should not issue detailed regulations governing or mandating CPP"); The Rural Cellular Association at 1 (stating that "minimal regulatory interference in the relationship between local exchange carriers... and providers of Commercial Mobile Radio Services... serves the public interest").

should be limited to addressing specific issues.^{20/} Of most concern, a few commenters apparently seek unlimited Commission involvement in CPP.^{21/} In light of these significant differences in position and the ongoing development of CPP nationally, the petition should be denied.

B. The Marketplace Will Devise Adequate Notification Procedures

USTA believes that wireline customers must receive adequate notification of potential charges associated with CPP and a means of providing affirmative consent to pay for their calls. Commission rules are not necessary, however, for appropriate notification and affirmative consent to occur with CPP offerings. Strong incentives are in place to ensure that such procedures are implemented with CPP service: both CMRS providers and incumbent LECs are motivated to protect consumers, reduce potential confusion about billing practices, and minimize uncollectible bills.

Because notification and consent measures can be implemented in many ways, the innovation of service providers and manufacturers, not regulation, should propel the deployment of these measures. Although commenters raise the issue of possible customer

^{20/} See, e.g., comments of Sprint Spectrum L.P. at 3 ("Essentially, there are *two* issues that must be resolved by the Commission if CPP is to evolve beyond the limited, scattered offering it is today") (emphasis added); The Rural Telecommunications Group at iii (describing a "few" issues regarding CPP).

^{21/} See, e.g., comments of Nextel Communications, Inc. at 1 (arguing that there are "numerous" issues to be resolved); AirTouch Communications, Inc. at 5 ("AirTouch encourages the Commission to undertake whatever proceedings it believes are necessary to permit CPP to develop fully").

confusion due to potentially different state-mandated notification requirements,^{22/} this concern is highly speculative at present. As noted above, CMRS providers and incumbent LECs have many reasons to make sure that notification and consent procedures are easy for consumers of all states to understand and execute, even if such procedures vary slightly by location.

C. Under A Market-Based Policy Regarding CPP, There Is No Need To Address Jurisdictional Issues

Commenters wrongly ask the Commission to exert exclusive, and preemptive, jurisdiction over CPP service.^{23/} However, the state regulators of Washington and Ohio raise important jurisdictional concerns in their comments.^{24/} If the Commission were to assert preemptive jurisdiction over CPP, it would be ignoring those comments as well as

^{22/} See, e.g., comments of CTIA at 3; Rural Cellular Association at 2; Omnipoint Communications, Inc. at 8; The Rural Telecommunications Group at 14.

^{23/} See, e.g., comments of Petroleum Communications, Inc. at 2; *see also* comments of CTIA at n.4.

^{24/} See comments of Washington Utilities & Transport Commission at 3-4; Public Utilities Commission of Ohio at 2-7.

recent jurisdictional statements of the National Association of Regulatory Utility Commissioners ("NARUC")^{25/} and skepticism voiced by FCC commissioners.^{26/}

If the Commission implements a market-based policy regarding CPP, it need not address jurisdictional issues at all. Because CPP is developing successfully, there is no need for the FCC to intervene. Indeed, a federal-state jurisdictional battle over CPP would be imprudent. Commenters in favor of Commission preemption provide, at most, an unproven basis for a decision to preempt, since policy conflicts -- as opposed to jurisdictional conflicts -- between the Commission and the states on CPP are not apparent.

USTA has previously noted that the Commission should be guided by the policy of section 11 of the Communications Act with regard to CPP.^{27/} Section 11 requires the Commission to review all regulations in effect in 1998 that "apply to the operations or activities of any provider of telecommunications service" and determine whether any such regulation is "no longer necessary in the public interest as the result of meaningful economic competition between the providers of such service."^{28/} Consistent with the intent of this command, the Commission should refrain from regulating CPP in the midst of section 11

^{25/} At its 1998 Winter Meeting, NARUC adopted a resolution that cautioned the Commission to "work cooperatively with the state to address the concerns regarding jurisdiction, consumer protection, and asserted necessity of CPP for maintaining local service options." See NARUC, Resolution Regarding the FCC Inquiry on the CMRS "Calling Party Pays" Service Option, <http://www.naruc.org/Resolutions/winter98.htm> (accessed May 27, 1998).

^{26/} See comments to USTA at 6, citing *CTIA asks FCC to take on calling-party pays issues; Some FCC members hesitate to jump on bandwagon*, RCR (Mar. 2, 1998) at 8 (comments of Commissioner Powell); *FCC Treats CPP With Reservation*, Wireless Week (Mar. 2, 1998) at 1 (comments of Commissioner Furchtgott-Roth).

^{27/} See comments of USTA at 6-7.

^{28/} See 47 U.S.C. § 161.

biennial review. Contrary to the position of The Rural Telecommunications Group, deregulation serves the public interest in this case.^{29/}

D. Billing and Collection Should Not Be Re-Regulated

As the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") declares, "Even under optimal conditions, implementation of CPP will likely prove difficult and costly for most Local Exchange Carriers."^{30/} Yet some commenters improperly seek to increase these burdens. By calling for mandatory LEC billing and collection for CPP,^{31/} some commenters attempt to turn the clock back before 1986, when the Commission deregulated LEC billing and collection services. LECs should continue to be allowed to negotiate their billing and collection terms with individual CMRS providers. As USTA has explained, it would be unreasonable for the Commission to discriminate in favor of CMRS providers by singling out for re-regulation LECs' billing and collection services associated with CPP.^{32/} The Commission should not pursue such discriminatory re-regulation.

^{29/} See comments of The Rural Telecommunications Group at 12.

^{30/} See comments of OPASTCO at 2.

^{31/} See, e.g., comments of Vanguard at 9-15; The Rural Telecommunications Group at 4, 9-12; AirTouch Communications, Inc. at 3.

^{32/} See USTA NOI reply comments at 6.

E. The Risks Of Offering CPP Should Not Be Shifted To Wireline LECs Through Regulation

Nor should the Commission impose any regulations that would shift the risks of offering CPP from CMRS providers to wireline LECs. The regulatory schemes envisioned by some commenters^{33/} would require LECs to bear certain financial risks and responsibilities associated with CPP that should be the subject of market-driven negotiations. As USTA has previously stated,^{34/} there is no reason for the Commission to require LECs to enforce collection of CPP-related charges on behalf of CMRS providers. Such requirements would unfairly discriminate in favor of CMRS providers while burdening incumbent LECs for no good reason.

The only limited action that the Commission should take in this area is to affirm that CMRS providers have a right to collect, or contract with others to collect, charges from callers for completed calls to CMRS phones, assuming that proper notification of and affirmative consent by callers takes place. The Commission has already established this right in the casual calling context.^{35/} Such an affirmation would render unnecessary additional burdensome regulations to redefine the relationship between CMRS companies and LEC end-users.^{36/}

^{33/} See, e.g., comments of Omnipoint Communications, Inc. at 5; compare Omnipoint NOI comments at 10-12.

^{34/} See USTA NOI reply comments at 9.

^{35/} See *Policy and Rules Concerning The Interstate, Interexchange Marketplace*, 12 FCC Rcd 15014 (1997) ¶ 28.

^{36/} See comments of Petroleum Communications, Inc. at 3.

Commenters have expressed concern about how some industry participants may be harmed by the risks that many CMRS providers seek to impose on LECs. OPASTCO seeks protection for its members from the ill effects of any Commission regulations.^{37/} The American Public Communications Council also seeks assurance that pay phone providers are not unjustly impacted by CPP implementation.^{38/} The best way for the Commission to prevent such harms would be to deny the petition.

F. The Commission Should Not Act to Increase
LEC End-User Charges

The American public and the Congress are concerned about new, confusing charges appearing on local phone bills.^{39/} Expedited action by the Commission on CPP will be perceived as fostering even more confusion by imposing still more charges on wireline end-users.^{40/} The resulting effects on universal service could be severe. The Commission should not act to increase wireline LEC end-user charges by regulating the provision of CPP.

^{37/} See comments of OPASTCO at 3.

^{38/} See comments of American Public Communications Council.

^{39/} See comments of Washington Utilities & Transportation Commission at 2 ("If the FCC needs any reminder of the difficulties consumers have with unknown charges creeping into their local phone bills, it merely needs to look to the volumes of slamming and cramming complaints that have shown exponential growth in recent months."). See also 144 CONG. REC. S4695 (daily. ed. May 12, 1998) (Statement of Senator Durbin); *Stevens, Hollings Question FCC's PICC Decisions*, TR Daily (rel. May 18, 1998).

^{40/} The appearance of new and unprecedented charges on local phone bills also will indisputably diminish LEC customer goodwill. Cf., comments of The Rural Telecommunications Group at 13.

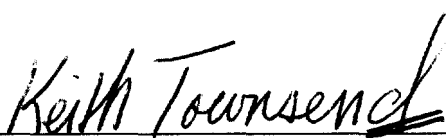
III. CONCLUSION

For the foregoing reasons, the Commission should deny the petition and not initiate a rulemaking into CPP at this time.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By:

A handwritten signature in black ink, appearing to read "Keith Townsend", is written over a horizontal line.

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